



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 27, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-4418

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 183461.

The City of Fort Worth (the "City") received a request for copies of the following two categories of information:

1. [T]he external quality assurance audit report conducted by [two named individuals] in regards to the Fort Worth Police Department's¹ crime lab[.]
2. [A]ny evaluation, review, or proficiency report conducted by [any of three named individuals] in regards to the crime lab's DNA section and/or scientists employed by the lab[.]

You assert the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note the submitted information contains an audit report governed by section 552.022(a)(1) of the Government Code. Section 552.022 provides, in relevant part, as follows:

¹ The "Department."

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Exhibit C consists of a completed audit report made expressly public by section 552.022(a)(1). Because you claim section 552.101, which constitutes other law for purposes of section 552.022, and section 552.108, we will address your arguments under these exceptions with respect to Exhibit C.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions of other statutes. Section 411.153(a) provides that "[a] DNA record stored in the DNA database is confidential and is not subject to disclosure under the open records law, Chapter 552 [of the Government Code]." Gov't Code § 411.153(a). Chapter 411 defines "DNA record" as "the results of a forensic DNA analysis performed by a DNA laboratory and, if known, the name of the person who is the subject of the analysis." Gov't Code § 411.141(4). You contend Exhibit C "is DNA related information, which falls within the purview of section 411.153." We disagree. Rather, we find the information consists of a completed quality assurance audit of the Department's Forensic Science Laboratory, which discusses methodology, procedures, and compliance issues in general terms with no references to specific "results of a forensic DNA analysis" as contemplated by section 411.153(a) of the Government Code. Accordingly, the City may not withhold Exhibit C on the basis of section 552.101 in conjunction with section 411.153 of the Government Code.

Next, you assert section 552.108 of the Government Code excepts Exhibit C from required disclosure. This provision provides, in pertinent part, as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). This office has stated a governmental body may withhold certain procedural information under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 252 (1980) (section 552.108

is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime).

However, to claim protection under this aspect of section 552.108, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Furthermore, generally known policies and techniques may not be withheld under section 552.108. *See* Open Records Decision No. 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were different from those commonly known). Whether disclosure of particular records will interfere with law enforcement or prosecution must be decided on a case-by-case basis. *See* Attorney General Opinion MW-381 (1981).

You opine that Exhibit C constitutes a "quasi law enforcement record" and argue that its release "would interfere with law enforcement." Based on these general and conclusory representations, we find you have not sufficiently shown how release of the submitted information would hinder law enforcement. Thus, we conclude the City has not met its burden of establishing the applicability of section 552.108; therefore, it may not withhold Exhibit C under this exception.

Lastly, with respect to Exhibit D, you argue the information is confidential. However, you cite no specific law as a basis for this assertion. You merely state that Exhibit D pertains to findings regarding the proficiency of a forensic analyst, which directly relate to quality assurance of the DNA laboratory. We are unaware of any applicable confidentiality provision. Furthermore, Exhibit D is not a DNA record made confidential by section 411.153 of the Government Code. Therefore, the City must release Exhibit D to the requestor.

In summary, the City must release Exhibit C because section 552.022 makes the completed audit expressly public and the City has not sufficiently established the applicability of either section 552.101 or 552.108 to this information. The City must release Exhibit D as it claims no exception to disclosure and it cites no authority requiring confidentiality of the information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Christen Sorrell". The signature is fluid and cursive, with the first name "Christen" written in a larger, more prominent script than the last name "Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 183461

Enc: Submitted documents

c: Ms. Deanna Boyd
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(w/o enclosures)